IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6340 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - : NO

2. To be referred to the Reporter or not? - :

3. Whether Their Lordships wish to see the fair copy of the judgement? - : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - : NO

5. Whether it is to be circulated to the Civil Judge? - : NO

HARIRAM CHIMANLAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR VC DESAI for Petitioner

MR MUKESH A PATEL, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 24/03/2000

ORAL JUDGEMENT

The petitioner was carrying on retail business of edible oil in the name and style of "Hariram Chimanlal Thakkar" in the shop situated at Gotini Sheri, Khadia, Ahmedabad.

2. At the relevant time the petitioner was holding a licence to deal with edible oils. The raiding party sent one Shrikant along with a panch witness Mehul at the shop

of the petitioner for purchasing one tin of "Vanaspati Ghee". At the relevant time, Hasmukhlal son of the petitioner was present at the shop. The son of the petitioner sold one tin of "Vanspati Ghee" and charged Rs.280/- instead of prevalent price of Rs.250/- and issue a bill of Rs.250/- for that tin. Thus, the son of the petitioner charged Rs.30/- more than the prescribed rate of that commodity. It is further stated the price of the packed tin was not shown on the price list and deficit of 40 k.gms. was found in the stock. The Officers of the Civil Supplies Department seized the stock and passed seizure order on 26-4-1884 and the licence of the petitioner was suspended for 90 days at the relevant time. The show cause notice was issued calling upon the petitioner as to why seized stock of "Vanaspati Ghee" should not be confiscated. According to the Civil Supplies Department, the petitioner has committed breach of the condition of the licence and also breach of the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981.

3. The petitioner filed reply to the show cause notice. The respondent no. 3 Additional Collector and Controller of Food and Civil Supply, Ahmedabad city after giving an opportunity of hearing to the petitioner passed the order dated 17-3-1987 confiscating the entire stock of 384.5 k.gms. of "Vanaspati Ghee". The petitioner preferred Appeal No.116/87 before the respondent no.2 - Deputy Secretary, Department of Civil Supplies, Gandhinagar.

4. Considering the fact that the petitioner has been acquitted by the Spl. Judge, City Sessions Judge, Ahmedabad in Spl. Case No. 3/84 and 4/84 in respect of the charges u/s 7 of the Essential Commodities Act, etc. The respondent no. 2 allowed the appeal in part holding that instead of 384.5 k.gms. of "Vanashpati Ghee", 300 k.gms. was ordered to be confiscated vide order dated 5-4-1988. The petitioner has filed the present petition against the said order dated 5-4-1988 of the Dy. Secretary, Department of Civil Supplies and the order dated 17-3-1987 of the Addl. Collector and Controller of Food and Civil Supply, Ahmedabad city. Interim relief was refused by this Court and hence the petitioner had to deposit Rs.5,500/- in compliance of the order of the appellate order dated 5-4-1988.

5. During the pendency of this petition, Hasmukhbhai son of the petitioner filed Criminal Appeal No. 28/85 against the conviction and sentence awarded by the Special Judge, City Sessions Court, Ahmedabad in Spl.

Case No. 3/84 before this Court. The appeal was decided by the judgment and order dated 9-2-1993 setting aside the conviction and sentence awarded to the son of the petitioner by the trial Court and he was acquitted from the charges levelled against him.

6. The contention of the learned counsel for the petitioner is that the petitioner and his son were prosecuted u/s 7 of the Essential Commodities Act for contravention of condition No. 6 (3) (4) & (7) of the licence and clause 16, 22 and 23 of the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981. The petitioner was acquitted by the trial Judge from the charges levelled against him and the petitioner's son was also acquitted by this Court in the aforesaid Cri. Appeal No 28/85 filed before this Court.

7. Thereafter, confiscating proceedings were initiated u/s 6A of the Essential Commodities Act against the petitioner and the entire stock of "Vanaspati Ghee" was confiscated by the respondent no. 3. On appeal, the Deputy Secretary, amended the order. The son of the petitioner was also acquitted by this Court in the aforesaid appeal filed before this Court against his conviction and sentence. The provision of Section 6C (2) of the Essential Commodities Act requires to return the essential commodities seized. In case it is not possible for any reason to return the essential commodity seized such person shall be paid as if the essential commodity had been sold to the Government with reasonable interest calculated from the day of seizure of the essential commodity. In the present case, the petitioner has deposited Rs.5,500/- regarding the stock seized on 15-6-1989. Hence, the petitioner is entitled to that amount along with reasonable interest as contemplated u/s 6C of the Essential Commodities Act and the orders of the respondents no. 3 and 2 are liable to be quashed and set aside.

8. Learned Asstt. Govt. Pleader contended that the departmental proceedings are different from the criminal proceedings. In the present case, the order of confiscation was passed u/s 6A of the Essential Commodities Act. That order has no concern with the criminal prosecution launched against the petitioner and his son. Even they have been acquitted by the Court of Law and the price amount of the article confiscated cannot be returned to the petitioner and the order of the respondent no. 3 confiscating "Vanaspati Ghee" and the order passed by the Deputy Secretary - respondent no. 2 will sustain on the ground that the petitioner and his son have been acquitted from the charges levelled against

them by the Court of Law. That does not affect the validity and legality of the orders with regard to confiscation and modification passed by the respondents no. 2 and 3. As such, the orders passed by the respondents no.2 and 3 are liable to be sustained and maintained by this Court and they cannot be interfered with by this Court.

9. I have considered the rival contentions of learned counsel for the paarties and perused the relevant papers. Section 6A of the Essential Commodities Act gives power to initiate the confiscation proceedings against the person whose articles have been seized under the provisions of the Essential Commodities Act. The provisions of Section 6A of the Essential Commodities Act cannot be said to be independent those from the prosecution if the prosecution has been launched for the contravention of the conditions of the licence and clauses of the aforesaid Order, 1981. Whether prosecution has been launched or not, the competent authority is entitled to initiate the proceedings for confiscating the articles seized under the provisions of the Essential Commodities Act and if the articles have been ordered to be confiscated then the appeal lies u/s 6C of the Essential Commodities Act before the State Government and the State Government after giving an opportunity of hearing to the appellant will pass an appropriate order confirming, modifying or annulling the order against which the appeal has been preferred. Provision of Subsection (2) of Section 6C of the Essential Commodities Act provides that if the order has been modified or annulled by the State Government under the provisions of Section 6C of the Essential Commodities Act or whether any prosecution has been instituted in contravention of the order in respect of which and order of confiscation has been passed u/s 6A of the Essential Commodities Act and the person concerned is acquitted, the articles confiscated will be returned to the person concerned. If the articles seized cannot be returned due to any reason, the price of that articles along with reasonable interest will be given to the person concerned. The provisions of Section 6C (2) of the Essential Commodities Act, provides two separate conditions for return of the articles seized or its price along with reasonable interest to the person concerned. Where the State Government has modified or annulled the order of confiscation of the articles or where the prosecution has been launched against the person for contravention of the orders in respect of which the order of confiscation has already been passed u/s 6A of the Essential Commodities Act, then the person concerned is

entitled for the price amount of the articles seized, along with reasonable interest, if is is not possible to return the articles seized.

10. Considering the facts and circumstances of the case, I am of the view that the orders passed by the respondent no. 3 confiscating the stock of the petitioner and modified by the Deputy Secretary, Gujarat State, are liable to be set aside and the petitioner is entitled for return of the amount of Rs.5,500/- which he has deposited on or before 15-6-1989 before this Court, together with 10% p.a. interest from the date 15-6-1989.

11. Accordingly, this petition is allowed and the orders passed by the respondent no. 3 confiscating the stock of the petitioner and which has been modified by the Deputy Secretary, Civil Supplies Department are quashed and set aside and the respondents are directed to return the amount of Rs.5,500/- to the petitioner to gather with 10% p.a. interest from the date of 15th June, 1989 till payment is made, within a period of three months from the date of production of a certified copy of this order by either party. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/